



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for return of double the security deposit – Section 38; and
2. A Monetary Order for compensation for loss – Section 67.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that the rental agreement between the Tenant and the Landlord is outside the jurisdiction of the Act. The Landlord states that the building in which the Tenant is housed, is owned by a Strata corporation and is operated as a bed and breakfast. The rooms can be rented on a daily basis or a monthly basis and where the room is rented on a monthly basis, a separate contract is entered into for each month. This contract includes a statement that the Act does not apply to the accommodation.

The Landlord states that the Tenant’s room was rented to the Tenant over a period of 11 months with a separate contract for each month. The Landlord confirmed the monthly rate paid by the Tenant and the amount of security deposit taken from the Tenant which is noted to be more than half the monthly rate. The Tenant was provided with 10 breakfasts per month on the monthly contracts. The Landlord states that the building also deals with the city in some cases to offer emergency housing. It is noted that the Landlord did not file any written evidence or paper documentation on the issue

of jurisdiction for the Hearing and provided oral evidence only for the Hearing. The Landlord states that the relevant section of the Act that applies to the Tenant's accommodation is section 4(d) or (e) of the Act but was unable to state how that section applies in the current case.

Section 4(d) of the Act provides that the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement. Section 4(e) of the Act provides that the Act does not apply to living accommodation occupied as vacation or travel accommodation. Section 5 of the Act provides that landlords and tenants may not contract out of the Act and that any attempt to do so is of no effect.

Although the Landlord argues that the Act does not apply to the Tenant's room as the room is one of many rooms offered as a bed and breakfast, the Landlord did not file any business licence as evidence of a bed and breakfast business. There is no dispute that the Tenant lived in the unit for 11 months, paid a damage deposit and entered into several one month agreements. This evidence however does not reasonably support a finding of a bed and breakfast accommodation or as travel and vacation accommodations but more reasonably supports the type of accommodation and tenancy agreements as contemplated by the Act. Further, although the Landlord states that the contracts signed between the Parties states that the Act does not apply, given Section 5 of the Act, I find that such a term in a contract is not in itself proof that the Tenant's accommodation is outside the jurisdiction of the Act. Accordingly, I find that the Act applies to the Tenant's accommodation and that therefore the dispute between the Parties may be resolved through the application of the Act.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 6, 2010 and ended on April 16, 2011. Rent in the amount of \$785.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$400.00. In a letter dated April 18, 2011, the Tenant provided the Landlord with a forwarding address that, in addition to requesting return of the security deposit, requested the landlord reimburse the Tenant for the same amounts claimed in the application for dispute resolution filed on May 13, 2011. The Landlord returned the full amount of the security deposit by cheque dated May 17, 2011 and the Tenant cashed the cheque. At the hearing, the Tenant stated that he was seeking return of double the damage deposit due to the Landlord's delay in returning the security deposit and that this is contained in the application and letter as a penalty amount claimed by the Tenant.

The Tenant states that he moved out of the unit without notice to the Landlord as he was afraid of the Landlord. The Tenant states that on a date prior to his departure, the Landlord yelled at the Tenant, belittled him in front of staff and renovation workers and ordered him off the premises when the Tenant objected to staff moving his personal items in his room to accommodate work being done on the Tenant's unit windows. The Tenant claims return of half of his rent paid for April 2011 and the amount of \$60.00 in transportation costs to take the Tenant and his belongings to another location. The Landlord denies yelling at the Tenant and states that the Tenant treated the staff badly.

The Tenant states that prior to this incident, the electricity had been off on several occasions for a period of up to 10 hours causing the food in his fridge to spoil and causing the elevator to stop working. The Tenant states that when the elevator was not working, he had to climb 11 flights of stairs to reach his room. The Tenant claims \$150.00 for the cost to replace the spoiled food. The Landlord states that the electricity was only down for 3 hours on one day and 5 hours on another day. The landlord states that the Tenant did not inform the Landlord that food had spoiled during this time.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Tenant is entitled to return of double the security deposit in the amount of \$800.00. As the Tenant has already received half of this amount, I find that the Tenant is entitled to a remaining monetary amount of **\$400.00**.

Section 45 of the Act requires a Tenant to provide a month's notice in order to end a month to month tenancy. The Tenant states however that he moved because he was afraid of the Landlord. Having heard the evidence of both parties, I find that the incident described by the Tenant was not one that would relieve the Tenant of the obligation to provide notice or that would give rise to a refund of a portion of the rent already paid. I therefore dismiss this the Tenant's claim for half the rent and transportation costs to move out of the unit.

Given the undisputed evidence that the Tenant went without electricity for a period of several hours, and despite the Tenant not informing the Landlord of spoiled food as a result, it would be reasonable to expect that some food may spoil in the fridge. Accordingly, I find that the Tenant has substantiated a loss and is entitled to a nominal award in the amount of **\$100.00** bringing the Tenant's total entitlement to **\$500.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$500.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 24, 2011.
